

Appl. No. 09/675,756
Amdt. Dated 08/21/2006
Reply to Office action of 04/21/2006

REMARKS

This Amendment is in response to the Office Action mailed April 21, 2006. In the Office Action, the Examiner objected to the specification and rejected claims (i) 21, 23-36 and 38-40 under 35 U.S.C. § 101; (ii) claims 1, 2, 4-6, 10-16, 18-21, 23-36, 38-41, 43-46, 49, 50 and 52 under 35 U.S.C. § 112; and (iii) claims 1, 2, 4, 5, 10, 11, 13-16, 18-21, 23-25, 28-31, 33-36, 38-41, 43-45, 49 and 50 under 35 U.S.C. § 103(a). Reconsideration in light of the amendments and remarks made herein is respectfully requested.

In the specification, a new paragraph has been added to replace page 4, lines 8-25 to correct minor editorial problems.

Specification

The objection to the specification has been addressed to correct a typographical error. Applicant respectfully requests that the Examiner withdraw the objection to the specification.

Rejection Under 35 U.S.C. § 112

The Examiner rejects claims 1, 2, 4-6, 10-16, 18-21, 23-36, 38-41, 43-46, 49, 50 and 52 under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. Applicants respectfully submit that an "edge server" is a term well-known in the art, and in fact, the Examiner states that "it was notoriously widely known in the art at the time of the invention that edge servers are used...". As described in the specification, it is a server located close to its users (i.e., not centralized, but positioned on the peripheral of the network). If further information is needed, Applicant respectfully suggests that any Internet search on the term "edge server" will uncover thousands of references to this product type.

Applicant respectfully requests that the Examiner withdraw the rejection of claims 1, 2, 4-6, 10-16, 18-21, 23-36, 38-41, 43-46, 49, 50 and 52 under 35 U.S.C. § 112, second paragraph.

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Rejection Under 35 U.S.C. § 101

The Examiner rejects claims 21, 23-36 and 38-40 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter, since the claimed invention lacks patentable utility because the Examiner considers that these claims are not limited to tangible embodiments.

The Examiner correctly asserts that the "computer usable medium" constitutes the "processor readable medium," includes any medium that can store or transfer information, even an RF link for example, that can transmit any signal including "a computer data signal embodied in a carrier wave". As such, the Examiner concludes that the claims are not limited to statutory subject matter and are therefore non-statutory. "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility," O.G. 22 Nov. 2005.

Applicant has amended the claims to recite an article of manufacture, such as a computer program product for example, that comprises a "processor readable medium..." Applicant respectfully submits that the proper construction of these claims is as claims to that subset of computer program products (articles of manufacture) that comprise a processor readable medium as defined by the specification, i.e. any mechanism that provides information in a form readable by a processor. To the extent that the specification may provide examples of computer-readable media that are not articles of manufacture, it is the applicant's position that such examples are not claimed. For the purpose of providing a record that gives clear notice of the scope of the invention that the applicant claims, applicant intends to claim the broadest scope of processor (computer) readable media permissible at the time the claims are construed, namely any article of manufacture that provides information in a form readable by a computer.

Since the claims are limited to an article of manufacture (computer program product) by their own terms and an article of manufacture is clearly patentable subject matter under 35 U.S.C. § 101, applicant respectfully requests that the Examiner withdraw the rejection of claims 21, 23-36 and 38-40 under 35 U.S.C. § 101 as lacking patentable utility.

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Rejection Under 35 U.S.C. § 103

A. Claims 1, 2, 4, 5, 10, 11, 13-16, 18-21, 23-25, 28-31, 33-36, 38-41, 43-45, 49 and 50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner (U.S. Patent No. 6,003,030 in view of McCarne (U.S. Patent No. 6,785,704) and Maddalozzo (U.S. Patent No. 6,178,460). Applicant respectfully traverses the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See MPEP §2143; See In re Fine*, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Herein, the combined teachings of the cited references fail to describe or suggest all of the claim limitations, and thus, a *prima facie* case of obviousness has not been established.

For instance, with respect to claim 1 for example, this claim includes the following limitations:

1) *registering information* with a service provider by a viewer using the viewing system *for storage and later use*, the information including a preferred order of edge servers for routing content to a viewer;

2) in response to the viewer requesting the content, *accessing the information after storage and selecting one of the edge servers to be a selected edge server* to receive and to transmit the content to the viewer via the network, the one of the edge servers being *automatically selected by the service provider* based on the information provided by the viewer.

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Applicant respectfully submits that neither Kenner, McCanne nor Maddalozzo, alone or in any combination, suggests the storage and usage of this information where the selection of the particular edge server is automatically selected by the service provided based on this information.

With respect to claim 21, Applicant respectfully submits that Kenner, McCanne nor Maddalozzo, alone or in any combination, suggests (1) computer readable program code to perform *periodic checks prior to requesting multimedia information for a connection quality to plurality of edge servers*, and (2) computer readable program code for *selecting an edge server of the plurality of edge servers based on the received information and the connection quality measured*. Rather, the combination of the cited references is directed to real-time verification of the link quality as described on column 11, lines 34-46 of Maddalozzo.

With respect to independent claim 41, Applicant respectfully submits that Kenner, McCanne nor Maddalozzo, alone or in any combination, suggests a selector coupled to the receiver, where the selector is adapted to select an edge server of the plurality of edge servers *based on the received information and prior periodic checks of a connection quality to the plurality of edge servers*.

Based on the lack of teaching or suggestion of these limitations, a *prima facie* case of obviousness cannot be established. Thus, independent claims 1, 21 and 41 are in condition for allowance.

In addition, based on the dependency of claims 2, 4, 5, 10, 11, 13-16, 18-20, 23-25, 28-31, 33-36, 38-40, 43-45, 49 and 50 on independent claims 1, 21 and 41, believed by Applicant to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. Applicant reserves the right to present such arguments in an Appeal is warranted.

Withdrawal of the §103(a) rejection as applied to claims 1, 2, 4, 5, 10, 11, 13-16, 18-21, 23-25, 28-31, 33-36, 38-41, 43-45, 49 and 50 is respectfully requested.

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B. Claims 21, 23, 24, 29-31, 33-36, 38-41, 43, 44, 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Emens (U.S. Patent No. 6,606,643) in view of McCanne and Maddalozzo. Applicant traverses the rejection in its entirety and incorporates the arguments set forth above. Applicant respectfully requests withdraw of this outstanding §103(a) rejection.

C. Claims 21, 23-25, 27-30, 32, 33-36, 38, 39, 40, 41, 43-45, 49, 50 and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Logan (U.S. Patent No. 6,578,066) in view of McCanne and Maddalozzo. Applicant traverses the rejection in its entirety and incorporates the arguments set forth above. Applicant respectfully requests withdraw of this outstanding §103(a) rejection.

D. Claims 12, 27-28, 32 and 52 under 35 U.S.C. §103(a) as being unpatentable over Kenner in view of McCanne, Maddalozzo and Logan. Applicant traverses the rejection in its entirety and incorporates the arguments set forth above. Applicant respectfully requests withdraw of this outstanding §103(a) rejection.

E. Claims 6, 26 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner in view of McCanne and Maddalozzo in view of Kenner2 (U.S. Patent No. 5,956,716). Applicant traverses the rejection in its entirety and incorporates the arguments set forth above. Applicant respectfully requests withdraw of this outstanding §103(a) rejection.

F. Claims 26 and 46 under 35 U.S.C. § 103(a) as being unpatentable over Emens in view of McCanne, Maddalozzo and Kenner2. Applicant traverses the rejection in its entirety and incorporates the arguments set forth above. Applicant respectfully requests withdraw of this outstanding §103(a) rejection.

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Conclusion

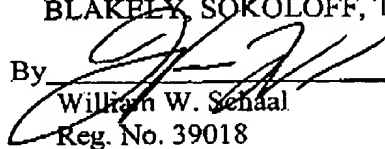
In view of the remarks made above, it is respectfully submitted that pending claims 1, 2, 4-6, 10-16, 18-21, 23-36, 38-41, 43-46, 49, 50 and 52 define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: August 21, 2006

By


William W. Schaaf

Reg. No. 39018

Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025

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Date: 08/21/2006


Susan McFarlane

08/21/2006

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